

**U.S. Department of Energy**  
**Washington, D.C.**

**ORDER**

**DRAFT**  
**DOE O 442.1B**

Approved: XX-XX-2015

**SUBJECT: DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM**

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1. **PURPOSE.** The purpose of this Order is to maintain an Employee Concerns Program (ECP) at the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), that: (1) encourages the free and open expression of employee concerns; and (2) provides DOE federal, contractor, and sub-contractor employees with an independent avenue to raise any concern related, but not limited, to the environment, safety, health, security, quality, and management, as well as harassment, intimidation, retaliation, and discrimination (HIRD).

The ECP is one of several Departmental assurance systems used to promote the effectiveness and efficiency of operations and programs, including a program's safety culture and safety conscious work environment. This Order establishes basic criteria and processes to ensure a degree of consistency among ECPs across the DOE complex.

The DOE ECP is intended to supplement, not replace, existing processes designed to address concerns. Employees are encouraged to first report concerns to their line management at the lowest level possible.

Technical concerns related to the environment, safety, and health, which are filed with the ECP, may be transferred to the DOE Differing Professional Opinion (DPO) process for review and disposition, pursuant to DOE O 442.2, *Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns*.

Use of the ECP does not forestall established timeframes, nor does it constitute legal notice to DOE, for other established processes. Finally, use of the ECP does not relieve employees of their responsibility to independently report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement to the DOE Office of Inspector General.

2. **CANCELLATIONS.** DOE O 442.1A, *Department of Energy Employee Concerns Program*, dated 6-6-01.

Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

3. **APPLICABILITY.**

- a. **Departmental Applicability.**

- (1) Except for the exclusions in paragraph 3.c., this Order applies to all DOE elements, including those elements created after the Order is issued.

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**INITIATED BY:**  
Office of Economic Impact and Diversity

- (2) The Administrator of the NNSA must assure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under Section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

b. DOE Contractors.

- (1) Except for the exclusions in paragraph 3.c., the Contractor Requirements Document (CRD), Attachment 1, sets forth the requirements of this Order that will apply to contracts that include the CRD. The CRD, Attachment 1, must be included in all contracts that contain Department of Energy Acquisition Regulation (DEAR) clause 970.5204-2, *Laws, Regulations, and DOE Directives*.

c. Equivalencies/Exemptions.

- (1) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. Section 2406 and 2511, and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors will implement and oversee requirements and practices pertaining to this Order for activities under his/her cognizance, as deemed appropriate.
- (2) Exemption. Consistent with Secretarial Delegation Order Number 00-033.00B to the Administrator and Chief Executive Officer of Bonneville Power Administration (BPA), this Order does not apply to BPA.

4. REQUIREMENTS.

a. Reporting Structure.

- (1) DOE Office of Employee Concerns. The Manager of the Office of Employee Concerns must be located in Headquarters and report to a Principal Secretarial Officer or senior executive designee in the Office of Economic Impact and Diversity (ED).
- (2) DOE Field Site Employee Concerns Programs. Each DOE field site must establish an Employee Concerns Program. A field site ECP Manager (ECP Manager) must report directly to the head of the field site or to a senior executive designee, provided that the senior executive designee is outside line management to prevent a conflict of interest. The ECP Manager must have access to the head of the field site (or, in the case of NNSA, the ECP Manager must have access to the NNSA Deputy Administrator) to ensure independence from line management.

- b. Reporting Requirements. The ECP must immediately report to line management and/or the environment, safety, and health office (ES&H), any concern that is associated with danger to an individual's safety, public health or safety, and/or the environment, or that could compromise the safety and/or security of DOE operations and/or facilities.
- c. Notification to Employees. The ECP must ensure that federal and contractor employees are informed of the following:
  - (1) the availability of the ECP as an avenue for filing a concern;
  - (2) contact information for the ECP, including where an individual may submit a concern;
  - (3) the fact that employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the ECP;
  - (4) management's support of the employees right to raise concerns to the ECP; and
  - (5) management's intolerance for retaliation against, or intimidation of, employees who report concerns or engage in protected activity.
- d. Interfacing with Organizations. The ECP must interface with other organizations, both internal and external to DOE, as necessary, to evaluate concerns in an independent and objective manner.
- e. Agency-wide Database and ECP Data. Information regarding employee concerns must be maintained in the ECP Agency-wide Database (a tracking/trending system), once it is available and implemented. The ECP Manager must complete all required information fields in the Agency-wide Database for each concern. Prior to the implementation of the ECP Agency-wide database, the ECP Manager must maintain sufficient records to track the following information: employee concerns activity levels; categories of concerns; dispositions of concerns; timeframes for resolving concerns; and other measures that may be required by the Office of Employee Concerns.
- f. Program Descriptions/Implementing Documentation. Employee Concerns Programs must establish program descriptions and/or implementing documentation that describe the methods and processes to be used to implement the following requirements:
  - (1) ECP Documentation and Records. Concerns must be documented in an ECP case file (hard copy or electronic). ECP records maintained by DOE federal Employee Concerns Programs are considered federal records. Such records fall within the DOE Systems of Records-3, and are subject to the provisions of the Privacy Act of 1974, as amended. Therefore, federal ECP records must be safeguarded and maintained in accordance with the provisions of the Privacy Act.

(2) Anonymity and Confidentiality.

- (a) Anonymity: A concerned individual may submit an employee concern without revealing his/her identity. When a CI submits a concern without revealing his/her identity, the concern is referred to as an anonymous concern.
- (b) Confidentiality: Confidentiality is the cornerstone of an effective ECP. Situations exist in which concerned employees may fear retaliation or intimidation by supervisors or co-workers if they provide information to the ECP. Recognizing that some individuals will raise concerns only if they believe their identities will not be disclosed, the protection of the identity of these individuals is a significant factor in ensuring the voluntary flow of information.

If a concerned individual or a witness requests confidentiality, the ECP will maintain confidentiality to the greatest extent possible. The extent to which confidentiality can be maintained depends on factors such as:

- 1 The existence of a duty-to-act situation;
- 2 Disclosure required by law, rule or regulation;
- 3 The existence of a reporting requirement established by law, rule or regulation.
- 4 The extent to which a particular employee may be identified with the concern (*e.g.*, the employee has previously voiced the concern, in whole or part, to a supervisor or co-workers; uniqueness of the concern); and
- 5 The extent to which confidentiality may impact the ECP's ability to thoroughly investigate a concern.

ECP personnel should inform employees of the limitations on protecting confidentiality under these circumstances.

(3) Intake, Documentation, and Processing of Concerns.

- (a) Intake of Concerns. When a concerned individual (CI) initiates a concern, the ECP must perform an intake with the CI to understand and document the concern.

When a concern is received, the ECP must perform an initial screening of the concern to evaluate reporting requirements and/or a duty-to-act. If the ECP determines that there is a reporting requirement and/or a duty-to-act, the notification and any other appropriate action must be expeditious. Where the ECP Manager suspends the processing of a concern until after such notification or other action, the ECP must resume processing of the concern in a

timely manner. The ECP should notify the CI of a reporting requirement or duty-to-act situation.

The ECP must inform the CI about the ECP process and may discuss other potential avenues of redress that may be available to the CI to resolve a concern.

- (b) Concern Documentation. The ECP must document a concern in sufficient detail to permit appropriate processing. Any supporting documentation and/or evidence provided by the CI or obtained by the ECP must be maintained in the ECP case file.
- (c) ECP Agency-wide Database. The ECP must complete all the required fields identified in the ECP Agency-wide Database as the concern is processed.
- (4) Triage of Concerns. The intent of the triage process is to ensure that each concern is reviewed, and a path for resolution is identified. The triage must be performed in a time period consistent with the nature and severity of the concern. During the triage process, the ECP must:
  - (a) Identify any required notifications to other organizations;
  - (b) Identify the category of concern (*e.g.*, environmental, safety, health, security, fraud, waste, abuse, quality, management, workplace violence, HIRD);
  - (c) Evaluate any potential conflicts of interest to ensure that any such conflicts are avoided in the processing of the concern.
- (5) Timeframes for Processing Concerns. The goal of the ECP is to close concerns within 90 days from date of receipt of the concern. The ECP may establish more stringent timeframes for various categories/types of concern.
- (6) Methods for Processing Concerns.
  - (a) Investigations. The ECP Manager may initiate an investigation for the purpose of examining a concern. The investigation may be conducted by or on behalf of the ECP (*e.g.*, subject matter expert).
    - 1 Investigations by the ECP. ECP investigations must identify sufficient information and/or evidence to permit the ECP to appropriately evaluate the concern and to reach a proper conclusion with regard to whether the concern is substantiated, partially substantiated, or unsubstantiated.
    - 2 Chilled Work Environment Investigation. The ECP Manager may investigate allegations of a chilled work environment.

- 3      **Written Investigation Report.** The investigative report must be written. The investigative report must be signed and dated, and contain, at a minimum, the concern description, investigation results, conclusions based on supporting evidence (*i.e.*, whether the concern is substantiated, partially substantiated, or unsubstantiated), and referenced documents.
- (b)      **Informal Resolution.** The ECP Manager may use informal and/or expedited techniques to address a concern, when appropriate.
- (c)      **Alternative Dispute Resolution (ADR).** ADR may be used as a mechanism for resolving a concern. ADR involves the use of a neutral third party and may take the form of mediation or other techniques. In order to attempt to resolve a concern through ADR, all parties must voluntarily agree to utilize the ADR process.
- (d)      **Referral to Another Organization.** The ECP Manager may refer a concern in writing to another office or program for evaluation. If a concern is referred to another organization, the ECP must inform the CI of the referral, if the identity of the CI is known. The receiving office must conduct an inquiry to evaluate the concern and report its findings to the ECP. The ECP must evaluate the response to ensure it addresses the underlying concern. The ECP retains the right to further evaluate or investigate the concern, if the response does not fully address the concern.
- (e)      **Transfer to Another Organization.** The ECP Manager may transfer a concern in writing to another organization when another resolution process exists to address the underlying issue(s) of the concern (*e.g.*, the Differing Professional Opinions process). If a concern is transferred to another organization, the ECP must inform the CI of the transfer, if the identity of the CI is known. The office that receives the transfer must conduct an inquiry to evaluate the concern and report its findings to the CI, if the identity of the CI is known.
- (f)      **Dismissal of a Concern.** The ECP Manager may dismiss a concern upon the CI's request unless the concern puts the ECP in a duty-to-act situation. The ECP Manager may also dismiss a concern on his/her own initiative, when appropriate (*e.g.*, when the concern is outside the scope of the ECP, and direct transfer to another organization is not appropriate; when the ECP determines that the concern is frivolous or too general to investigate; as well as under other appropriate circumstances).
- (7)      **Conclusions and Briefing Cognizant Management.** The ECP Manager may render written conclusions and identify issues for management attention based on the results of an investigation, referral, chilled work environment assessment, and/or other type of review of an employee concern.

Within ten (10) business days of completing the written report, or as soon as possible thereafter, ECP personnel must brief cognizant management on issues identified for management attention. The briefing must be documented.

ECP personnel are encouraged to engage in a dialogue with the cognizant manager on options for addressing the concern and the timeline for any corrective actions. However, the cognizant manager is ultimately responsible for ensuring the concern is adequately and effectively addressed, and that actions are taken to prevent recurrence of a similar situation.

- (8) Corrective Actions. Corrective actions committed to by management must be documented by management in a formal corrective actions tracking system. The documentation must identify the corrective actions that have been committed to, the individual, office and/or organization that has accepted responsibility for implementing the corrective actions, as well as the anticipated completion date of the corrective actions. A copy of the corrective actions documentation must be provided to the ECP. Use of a tracking system for corrective actions must not compromise the identity of the CI or the individual against whom the allegation has been raised.
- (9) Closure of Concerns. A concern must be tracked until closure. A concern is considered closed when either:
  - (a) The CI has withdrawn the concern, and the nature of the concern does not require further evaluation. In addition, the ECP Agency-wide database has been updated to include required fields; or
  - (b) The concern has been evaluated, investigated and/or otherwise addressed consistent with Section 4(f)(6), and the following steps have been taken:
    - 1 The ECP has briefed management on any issues for management attention;
    - 2 If corrective actions have been identified, the manager responsible for taking corrective actions has accepted jurisdiction over the matter, the corrective actions have been documented by management in a formal corrective actions tracking system, and a copy of the corrective actions documentation has been provided to the ECP;
    - 3 The CI, if the CI's identity is known, has been provided notification of the concern disposition (*i.e.*, whether the concern was substantiated, partially substantiated, or unsubstantiated); and
    - 4 The ECP Agency-wide database has been updated to include required fields.

- (10) Reconsideration. After being notified of the closure of a concern, a CI may request, in writing, reconsideration of the concern if the CI has additional information that might impact the disposition of the concern. The ECP Manager will inform the CI as to whether the request for reconsideration has been granted or denied.
- (11) Contractor Oversight. The ECP Manager is required to evaluate the effectiveness and efficiency of contractor ECPs. The ECP Manager must coordinate with the cognizant contracting officer on contract oversight activities. Contract oversight includes, but is not limited to:
  - (a) Reviewing initial and/or revised contractor ECP program descriptions and/or implementing documents or revisions, responding in writing within 30 days of the contractor's submission of such program, identifying that either the program is approved, or if not, what requirements have not been met;
  - (b) Performing a compliance and performance-based assessment of each contractor ECP within one year of program plan approval, and at least once every three years thereafter.
  - (c) Performing other assessments and/or oversight activities, as deemed necessary.
- (12) Training and Qualification. Personnel responsible for implementing the ECP or investigating concerns must be trained to properly carry out their responsibilities (*e.g.*, training on investigation methods; training on the identification and classification of health and safety issues; and training on alternative dispute resolution techniques).
- (13) ECP Assessment. The ECP Manager must assess, at least annually, the effectiveness of the ECP and processes used to implement this Order. Problems that hinder the ECP from achieving its objectives must be identified and corrected.
- (14) ECP Quarterly and Annual Reports.
  - (a) Upon request, the ECP Manager must submit quarterly and annual reports to the Office of Employee Concerns.
  - (b) The ECP Manager must submit quarterly and annual reports to the head of the field site and brief the head of the field site on possible adverse trends and lessons learned.
- (15) New Employee Notification. Employees must be notified of the ECP upon hire. Notification to employees may be accomplished through a face-to-face briefing, a computer-based training module, the issuance of a written policy statement, and/or the issuance of information through another medium.



## 5. RESPONSIBILITIES.

### a. Manager, Office of Employee Concerns.

- (1) Develops, promulgates, and maintains ECP directives.
- (2) Provides guidance and assists DOE and contractor organizations in effectively implementing ECP directives and policies.
- (3) Decides which concerns that are brought to the attention of the Office of Employee Concerns the office should seek to resolve, which warrant referral or transfer to another office for review, or which warrant no further action.
- (4) Briefs Secretarial Officers, field site managers, NNSA Deputy Administrators, and/or others on program trends and lessons learned, as well as the effectiveness of ECP implementation.
- (5) Conducts site assist visits to DOE and contractor organizations to help ensure that ECPs are adequately implemented and best practices are shared.
- (6) Develops and maintains the DOE Agency-wide Database for use by DOE federal and contractor ECPs.
- (7) Establishes training curriculum for field site ECP Managers and ECP staff, as well as subject matter experts that may support the ECP.

### b. Secretarial Officers/Field Site Managers/NNSA Deputy Administrators.

- (1) Designate the management position or positions responsible for developing and implementing the ECP.
- (2) Provide adequate support and resources to the Manager, Office of Employee Concerns, and the field site ECP Managers, for effective agency implementation of the ECP. In addition, provide appropriate resources and support to ensure ECP personnel are trained in ECP policies, procedures, processes, and practices.
- (3) Identify contractors for the programs under their authority to which the CRD applies. Ensure that the cognizant contracting officer incorporates the CRD into contracts to which the CRD applies.
- (4) Use ECP self-assessment results to evaluate the effectiveness of the ECP and the processes used to implement this Order. Implement improvement actions, when necessary, to address issues impacting the effectiveness of the ECP.
- (5) Process employee concerns that are referred or transferred to their respective organizations consistent with this Order.

c. ECP Managers.

- (1) Develop the ECP implementation documentation (Program Description Plan), identifying roles and responsibilities of their respective ECP, as well as responsibilities of ECP personnel, consistent with this Order. Submit the ECP program implementation documentation to the appropriate Secretarial Officer or Field Site Manager for approval.
- (2) Implement the approved site/element ECP.
- (3) Publicize ECP processes and employee rights and responsibilities to report concerns.
- (4) Process employee concerns, and manage the processing of employee concerns, in accordance with this Order and implementing documentation.
- (5) Maintain ECP case file information. Enter case file information into the ECP Agency-wide Database as the concern is processed.
- (6) Prepare ECP quarterly and annual reports for their respective ECP and review them with appropriate management officials for lessons learned and possible adverse trends. Upon request, submit quarterly and annual reports to the Office of Employee Concerns.
- (7) Review annual assessments of their respective ECP with appropriate management officials. Provide a copy of annual assessment to Office of Employee Concerns.
- (8) Provide information and assistance to the cognizant senior executive and/or management in addressing issues identified through the ECP.
- (9) Inform appropriate levels of management when actions are either ineffective or not timely in resolving concerns or correcting identified issues.
- (10) Coordinate with contracting officers to determine the existence of contract requirements for the establishment of contractor ECPs and the means and criteria by which such contractor ECPs will be evaluated.
- (11) Conduct assessments, which may include chilled work environment assessments, of respective site/element and contractor organizations, as appropriate, in support of free and open communications and a safety conscious work environment.

d. Office of Enterprise Assessments (EA).

- (1) Act as DOE's independent oversight organization, responsible for aspects relative to public and worker health, safety, security, and environmental protection.

- (2) Provide technical assistance to DOE organizations in investigations of health, safety, and security concerns.
- (3) Independently assess the overall effectiveness of ECPs and the processes used to implement this Order, as necessary.
- (4) Ensure that if an employee raises a concern (other than a regulatory non-compliance issue) to the EA staff, that the staff is trained to advise the employee on alternate avenues for raising concerns, including the ECP.
- (5) Interface with the Manager, Office of Employee Concerns, and field site ECP Managers regarding field site ECP implementation, as well as programmatic implementation impacts.

e. Chief Human Capital Officer and Field Site Human Resource Managers.

- (1) Interface with and assist the Manager, Office of Employee Concerns, and/or ECP Managers in addressing employee concerns raised through the ECP.

f. Contracting Officers.

- (1) Incorporate the ECP Contractor Requirements Document into all contracts for the management and operation of DOE-owned or DOE-leased facilities (*i.e.*, those contracts that contain DEAR clause 970.5204-2, *Laws, Regulations, and DOE Directives.*)
- (2) Interface with and assist the Manager, Office of Employee Concerns, and/or ECP Managers in addressing employee concerns raised by contractor employees through the ECP, as necessary.
- (3) Assist the Manager, Office of Employee Concerns, and/or ECP Managers with oversight activities of contractor ECPs, as necessary.

g. Managers and Supervisors.

- (1) Respond to concerns raised by employees in a prompt, effective, and respectful manner to ensure the safe and efficient operation of programs under their authority.
- (2) Process employee concerns that are referred or transferred to their respective organizations consistent with this Order.
- (3) Actively promote and support the ECP to ensure that concerns raised with the ECP are adequately, effectively, and timely addressed.

6. REFERENCES.

- a. DOE P 226.1B, *Department of Energy Oversight Policy*, dated 4-25-11.

- b. DOE O 226.1B, *Implementation of Department of Energy Oversight Policy*, dated 4-25-11.
- c. Secretary of Energy Memorandum, *Employee Concerns Program Statement*, dated 10-05-14.
- d. 10 C.F.R. Part 851, Worker Safety and Health Program.
- e. DOE O 440.1B, *Worker Protection Program for DOE (including the National Nuclear Security Administration) Federal Employees*, dated 5-17-07.
- f. 10 C.F.R. Part 708, DOE Contractor Employee Protection Program.
- g. DOE O 442.2, *Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns*, dated 7-29-11.
- h. 29 C.F.R. Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters, including 29 C.F.R. Section 1960.28, Employee Reports of Unsafe or Unhealthful Working Conditions.
- i. 29 C.F.R. Part 24, Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended.
- j. Price-Anderson Amendments Act of 1988, Pub. L. No. 100-408, as amended.
- k. 10 C.F.R. Part 820, Procedural Rules for DOE Nuclear Activities.
- l. National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (Title XXXII), as amended.
- m. Executive Order 12344, Naval Nuclear Propulsion Program.
- n. DOE O 221.1A, *Reporting Fraud, Waste and Abuse to the Office of Inspector General*, dated 4-19-08.
- o. Department of Energy Statement of Policy on Alternative Dispute Resolution, 73 Fed. Reg. 63,458 (Oct. 24, 2008).
- p. Privacy Act of 1974, Pub. L. No. 93-579, 5 U.S.C. Section 552a, as amended.
- q. Freedom of Information Act of 1974, Pub. L. No. 93-502, 5 U.S.C. Section 552, as amended.

## 7. DEFINITIONS.

- a. Alternative Dispute Resolution (ADR). A process for resolving a dispute through the use of a neutral third party. ADR may take the form of mediation or other techniques. In order to attempt to resolve a concern through ADR, all parties must voluntarily agree to utilize the ADR process.

- b. Anonymous Concern. A concern submitted by a concerned individual who does not reveal his/her identity.
- c. Assessment. A planned and documented activity performed to determine the adequacy of and compliance with established policies, procedures, and other applicable documents and the effectiveness of their implementation.
- d. Assurance Systems. Systems that encompass all aspects of the processes and activities designed to identify deficiencies and opportunities for improvement, report deficiencies to the responsible managers, complete corrective actions, and share in lessons learned effectively across all aspects of operations.
- e. Chilled Work Environment. A work environment where employees are unwilling and/or unable to raise concerns because they fear retaliation.
- f. Concern. A good faith expression by a concerned individual that an activity, policy, or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated.
- g. Concerned Individual (CI). A person expressing a concern through the ECP. A CI may include a current or former employee of DOE, including NNSA, or a current or former DOE contractor or subcontractor on a DOE project.
- h. Confidential Concern. A concern submitted by a concerned individual who wishes to have his or her identity protected from all persons except the ECP staff and those other individuals supporting ECP that may have a need to know.
- i. Conflict of Interest. A situation in which the individual responsible for investigating an employee concern could be associated, either directly or indirectly, with the concern.
- j. Corrective Action. An action taken to effectively address an employee concern and to prevent the recurrence of the underlying issue(s) that led to the filing of the concern.
- k. Days. Days are calendar days unless specified otherwise.
- l. Differing Professional Opinion. An opinion involving a technical issue related to ES&H that: (1) differs from previous management decisions, stated positions, or established policies or practices; (2) in the opinion of the employee, has not been adequately considered; and (3) if not addressed, has a reasonable probability of having significant negative impact with respect to the environment, safety, or health.
- m. Discrimination. The act of treating an employee differently from other employees because he/she reasonably and in good faith raised a concern or engaged in protected activity.

- n. Duty-to-Act. The responsibility to report to line management and/or ES&H a condition that puts at risk the health, safety and/or security of workers, DOE programs or missions, the environment, or the general public.
- o. Employee. Any person who currently works for, or who was formerly employed by, DOE, including NNSA, or a DOE contractor or subcontractor on a DOE project.
- p. Harassment. A behavior or an action taken by supervisors or co-workers against or toward an employee to belittle, humiliate, or impede that employee in his or her work environment or job performance because the employee reasonably and in good faith raised a concern or engaged in protected activity. Harassment may include, but is not limited to, threatening, restraining, coercing, blacklisting, mocking, humiliating, and/or isolating an employee.
- q. HIRD (Harassment, Intimidation, Retaliation, and/or Discrimination). A type of concern that includes allegations of harassment, intimidation, retaliation, and/or discrimination.
- r. Intimidation. A behavior or an action taken by a supervisor or co-worker against or toward any employee to cause the employee to: be fearful of filing a concern or engaging in protected activity; cease from pursuing a concern or from engaging in protected activity; or otherwise be afraid for his/her safety or job security as a result filing a concern or engaging in protected activity.
- s. Partially Substantiated. A type of finding with respect to a concern. A concern is partially substantiated when the facts only partially validate or support a concern.
- t. Protected Activity. Engaging in an activity or exercising a right that is protected by law, regulation, and/or rule.
- u. Referral of a Concern. The referral of an employee concern to another office or program or subject matter expert for evaluation. See Section 4.f.6.d for additional information regarding referral of a concern.
- v. Retaliation. An adverse action taken against or toward an employee with respect to employment because the employee reasonably and in good faith raised a concern or engaged in protected activity.
- w. Safety Conscious Work Environment (SCWE). A work environment in which employees feel free to raise safety concerns to management (and/or a regulator) without fear of retaliation.
- x. Safety Culture. An organization's values and behaviors modeled by its leaders and internalized by its members, which serve to make safe performance of work the overriding priority to protect the workers, the public, and the environment.
- y. Substantiated. A type of finding with respect to a concern. A concern is substantiated when the ECP has corroborated the concern based on supporting evidence.

- z. Transfer of a Concern. The transfer of an employee concern to another organization when another resolution process exists to address the underlying issue(s) identified in the concern. See Section 4.f.6.e for additional information regarding transfer of a concern.
  - aa. Unsubstantiated. A type of finding with respect to a concern. A concern is unsubstantiated when the facts did not validate or support a concern.
8. CONTACT. Questions surrounding this order should be addressed to the Office of Economic Impact and Diversity, Office of Civil Rights, at 202-586-2218.

BY ORDER OF THE SECRETARY OF ENERGY

ELIZABETH SHERWOOD-RANDALL

Deputy Secretary

**CONTRACTOR REQUIREMENTS DOCUMENT**  
**DOE O 442.1B, DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM**

This Contractor Requirements Document (CRD) establishes the requirements for Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contractors whose contracts contain DEAR clause 970.5204-2 *Laws, Regulations, and DOE Directives* to establish and maintain an Employee Concerns Program, consistent with the DOE ECP Order.

The contractor must do the following:

1. Process concerns consistent with the requirements and criteria established in the DOE ECP Order.
2. Submit an ECP Description/Implementation Document within 45 days of: (1) the effective date of this CRD, for existing contracts to which this CRD applies; or (2) the effective date of a new contract to which this CRD applies, for review and approval by the DOE ECP Manager prior to program implementation. The contractor must follow the approved ECP Description/Implementation Document. Any revisions to the ECP Description/Implementation Document must be reviewed and approved by the DOE ECP Manager prior to implementation. The ECP Description/Implementation Document must include and describe the following elements:
  - a. Organization/Structure/Interface: The process that will be used to demonstrate that the ECP is not only evaluating the concern in an independent and objective manner, but also coordinating with appropriate organizations in the resolution of concerns. This includes a description of:
    - (1) The manner in which the ECP is independent from line management;
    - (2) The manner in which the ECP Manager will have direct access to the head of the contractor organization;
    - (3) The manner in which the ECP will interface with legal counsel, line management, and support organizations (*e.g.*, human resources, environmental, safety and health, and quality, EEO) to evaluate concerns in an independent and objective manner;
    - (4) The manner in which the concerns of employees of subcontractors will be addressed; and
    - (5) The manner in which the ECP will conduct a compliance and performance-based assessment of its program within one year of program approval and then at least biennially.
  - b. ECP Records. Describe the system or process that will be used to maintain ECP records, and the manner in which confidentiality will be maintained to the maximum extent possible.



- c. Notification of Concerns. Describe the process that will be used to ensure the ECP Manager will:
- (1) Immediately report, to the cognizant management official and/or ES&H, any concerns that involve danger to an individual, public health or safety, or the environment, or that could compromise the safety and/or security of operations and/or facilities.
  - (2) Within 15 days, notify the DOE ECP Manager of any concerns associated with a chilled work environment and/or harassment, intimidation, retaliation, and/or discrimination (HIRD) for filing a concern or engaging in protected activity.
- d. Processing Concerns. Describe the manner in which concerns will be processed, including the following:
- (1) Intake and Documentation.
    - (a) The manner in which the ECP performs intake of concerns;
    - (b) The manner in which the ECP documents concerns;
    - (c) The manner in which concerns are initially screened for duty-to-act situations; and
  - (2) The manner in which the ECP informs the Concerned Individual (CI) of relevant information, including other potential avenues of redress that may be available to the CI to resolve a concern, as well as the right of the CI to utilize the DOE ECP.
  - (3) Triage.
    - (a) The manner in which the ECP determines the method by which it will process a concern and the timeframes for making that determination; and
    - (b) The manner in which the ECP will evaluate the potential for conflict of interests in the processing of the concern.
    - (c) The manner in which the ECP will ensure the confidentiality of the CI.
  - (4) Investigations.
    - (a) The manner in which the ECP will process concerns (*e.g.*, through investigation, referral, transfer, informal resolution, and/or alternative dispute resolution), including the manner in which the contractor will document concern processing and any conclusions

reached (*i.e.*, whether the concern is substantiated, partially substantiated, or unsubstantiated);

- (b) The manner in which the ECP will determine when to dismiss a concern; and
    - (c) The manner in which the ECP will brief management and document corrective actions.
  - (5) Corrective Actions. The manner in which the contractor will develop and document corrective actions.
  - (6) Communication of the ECP. The manner in which the contractor will ensure that employees are aware of the ECP and how to access it. The manner in which the contractor will ensure that employees are aware that they have the right to raise concerns with the contractor ECP and/or the DOE ECP.
  - (7) Training and Competencies. The manner in which the contractor ECP manager and any ECP personnel will be trained to meet the competencies of their positions (*e.g.*, knowledge of the ECP process, investigative skills, experience in concern resolution, experience in alternative dispute resolution, etc.).
3. Cooperate and assist DOE in the processing of employee concerns. This includes, but is not limited to, cooperation with ECP representatives in making available both employees and pertinent evidence (including documentation).
4. Document any corrective actions committed to by management related to a concern. The documentation must identify the corrective actions that have been committed to, the individual, office and/or organization that has accepted responsibility for implementing the corrective actions, as well as the anticipated completion date of the corrective actions. A copy of the corrective action documentation must be provided to the respective DOE ECP Manager. Use of a tracking system for corrective actions must not compromise the identity of the CI or the individual against whom the allegation has been raised.
5. Maintain current/updated information regarding employee concerns in a tracking/trending system. The contractor must provide ECP reports to the DOE ECP as requested. For tracking purposes, a concern is considered closed when:
- a. The CI has withdrawn the concern, and the nature of the concern does not require further evaluation; or
  - b. The concern has been evaluated, investigated and/or otherwise addressed, and the following steps have been taken:
    - (1) The ECP has briefed management on any issues for management attention;

- (2) If corrective actions have been identified, the manager responsible for taking corrective actions has accepted jurisdiction over the matter, the corrective actions have been documented in a formal corrective actions tracking system, and a copy of the corrective actions documentation has been provided to the ECP; and
- (3) The CI, unless anonymous, has been provided notification of the concern disposition (*i.e.*, whether the concern was substantiated, partially substantiated, or unsubstantiated).